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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re R. J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R. J.,

Defendant and Appellant.

G040143

(Super. Ct. No. DL022226)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Ronald P. Kreber, Judge. Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Elizabeth S. Voorhies, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant was charged in juvenile court with possessing a concealable firearm, possessing a firearm on school grounds, possessing cocaine for sale, and street terrorism. It was also alleged he acted for the benefit of a criminal street gang. After sustaining the charges, the court sentenced appellant to one year in juvenile detention and continued his status as a ward of the court. Appellant contends the firearm counts should be reversed because there is insufficient evidence he possessed a gun. We disagree and affirm the judgment.

FACTS

On February 1, 2008, at about 5:00 p.m., undercover police detective Jose Becerra drove to an area on South Townsend Street in Santa Ana to conduct general surveillance. Five minutes after he arrived, he saw a black man and a white woman walking directly across from his position. The couple approached three male Hispanics, appellant, “Ortiz,” and “Roman,” who were standing near a vending truck.

The couple made contact with Ortiz, and he pointed to appellant and Roman, who were now leaning against the front grille of the truck. They joined the others, and after a brief conversation, Roman walked back to the vending truck and reached into the front grille. He then returned to the group and made a quick hand exchange with the black man, as appellant and Ortiz looked about the area. Following the exchange, the couple walked down South Townsend, out of Becerra’s view.

Appellant, Ortiz and Roman stayed in the vicinity of the vending truck. Although there were times when they drifted away from the truck a bit, they never strayed too far; one of them was always positioned by the truck’s front grille. In light of his observations, Becerra radioed other police units in the area, and they converged upon the truck. This prompted appellant to flee, but Police Detective Andy Alvarez — with radio assistance from other officers — cornered him in a nearby apartment complex. Alvarez did not see appellant enter the complex, but he did notice a woman standing in front of an open door to one of the units. Upon obtaining her permission to enter, he

walked inside the apartment and saw appellant, sweaty and out of breath, sitting on a bed in the living room.

Alvarez detained appellant and brought him back to the vending truck. He then examined the front grille of the truck and discovered the hood latch was slightly ajar and there was no cover on the grille. The absence of a cover meant that one could reach behind the grille, into the engine compartment and front wheel wells of the truck, without opening the hood. In the wheel well on the driver's side of the truck, Alvarez found a baggie containing 1.6 grams of cocaine, and in the wheel well on the other side, he found a loaded revolver. The weapon was positioned muzzle down, so it could be easily retrieved by its handle.

Gang expert Clint Achzinger testified appellant, Ortiz and Roman were members of Townsend Street, a criminal street gang whose primary activities include narcotics sales and weapons violations. Achzinger also opined that appellant acted to benefit his gang in this case. Speaking of gangs in general, he said guns are "their best tool for achieving violence," and "gang guns" are specific weapons that everybody in the gang knows about. Likening a gang gun to the ball in football, he said everybody knows where it is.

Becerra testified that in his opinion, appellant and his companions possessed the cocaine for the purpose of sale. One of the factors he relied on in forming this opinion was the presence of the gun. Given the gun's proximity to the cocaine, Becerra believed "the gun was there . . . to protect their product."

The defense theory was misidentification. Appellant and four other defense witnesses testified appellant was playing handball in a nearby park at the time of the alleged drug sale on South Townsend Street. Appellant also testified that he was not a gang member and did not know Roman or Ortiz.

DISCUSSION

Appellant contends there is insufficient evidence to support the juvenile court's finding he possessed a firearm. We disagree.

In considering a challenge to the sufficiency of the evidence in a criminal case, we “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 562.) This standard of review applies in both adult and juvenile proceedings. (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404.)

“A defendant possesses a weapon when it is under his dominion and control. [Citation.] A defendant has actual possession when the weapon is in his immediate possession or control. He has constructive possession when the weapon, while not in his actual possession, is nonetheless under his dominion and control, either directly or through others. [Citations.]” (*People v. Pena* (1999) 74 Cal.App.4th 1078, 1083; accord *People v. Williams* (2009) 170 Cal.App.4th 587, 625.) “Possession of a weapon may be proven circumstantially, and possession for even a limited time and purpose may be sufficient. [Citation.]” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.)

Substantial evidence supports the juvenile court's finding appellant had the right to control the gun that was found in this case. He was seen standing directly in front of the vending truck before and after the hand exchange occurred, and he never strayed far from that general area, at least not before the police made their presence known. And when that happened, he fled the scene immediately, which is also indicative of his guilt. (See *People v. Garcia* (2008) 168 Cal.App.4th 261, 283.)

Besides appellant's presence near the gun and his flight from the police, the evidence showed he belonged to a gang that engaged in narcotics activity and weapons offenses. And in this particular case, there was a baggie of cocaine located in fairly close

proximity to the gun. They were both located under the hood of the vending truck that appellant was seen guarding with his fellow gang members. But appellant did not have to lift the hood to access the gun; rather, all he had to do was reach through the front grille into the wheel well area and grab it by the handle. That would have given him ready means to protect the cocaine he and his companions were so clearly peddling on the street that day.

So, while appellant was never seen in physical possession of the gun, the circumstantial evidence strongly supports the inference he and his fellow gang members had dominion and control over the weapon, so as to support a finding of constructive possession. It wasn't just that they acted in concert together in guarding the truck and coordinating the street sale that Becerra witnessed. There was also testimony from Detective Achzinger about how important guns are to gangs and how gang members generally know when another member of their gang is armed. Taking all of the evidence into consideration, the trial court could readily infer appellant knew about the gun and had dominion and control over it.

Appellant argues Detectives Becerra and Achzinger went too far in their testimony by stating their belief "that appellant knew about the gun." But that is not what they said. Detective Achzinger testified instead about the general practices and expectations of gang members. He said gang members usually know about guns in their gang, but he was not asked to offer his opinion about whether appellant knew about the gun in the truck. As appellant points out, that was a factual question for the trial court. However, there was nothing wrong with the court relying on Achzinger's generic testimony about gangs in deciding that issue. (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 658 [gang experts may testify to the habits and general expectations of gang members]; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1370-1371 ["The use of expert testimony in the area of gang sociology and psychology is well established."].)

As for Detective Becerra, he did testify that the gun found in the vending truck was being used to protect the cocaine. However, that testimony was offered to provide the basis for his opinion about whether the cocaine was possessed for sale, not to prove appellant's knowledge of the gun. Therefore, his testimony did not usurp the trial court's fact-finding function with respect to that issue. No evidentiary error has been shown.

In light of the detectives' testimony and the circumstances surrounding the commission of the charged offenses, there is substantial evidence to support the trial court's determination appellant constructively possessed the gun that was found in the truck. Therefore, we uphold the court's decision in that regard.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.